

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHRISTOPHER A. JONES,

Plaintiff,

vs.

DWIGHT NEVEN, *et al.*,

Defendants.

Case No. 2:07-cv-01088-JCM-GWF

**ORDER; FINDING AND
RECOMMENDATION**

Motion to Modify Scheduling Order
(#179); Motion for Extension of
Time (#180)

This matter is before the Court on Plaintiff's Motion to Modify Scheduling Order (#179), June 14, 2011, and Plaintiff's Motion for Extension of Time (#180), filed June 14, 2011.

By way of his Motion to Modify Scheduling Order (#179), Plaintiff requests that the Court modify the scheduling order to permit an amendment to the complaint. Plaintiff is seeking to revive the cause of action for medical negligence that was already dismissed as against Dr. Steven MacArthur. *See* Order (#70). Leave to amend is properly denied if the proposed amendment would be futile or subject to dismissal. *See Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991). In its prior order of dismissal, entered on May 14, 2008, the Court was clear that in order to bring the cause of action in question Plaintiff must submit the affidavit required by Nev. Rev. Stat. § 41A.071. No such affidavit has been submitted. Consequently, the Court finds that the proposed amendment would be futile and subject to dismissal on the same grounds identified previously. The Court also notes that Plaintiff failed to attach a copy of the amended complaint to his motion as required by LR 15-1. Based on the foregoing, the Court will recommend that Plaintiff's Motion to Modify Scheduling Order (#179) be **denied**.

By way of his Motion for Extension of Time (#180), Plaintiff requests an additional fourteen (14) days to file the Statement of Additional Discovery Requested due by June 15, 2011

1 (see Order (#176)). Plaintiff's request is based on his stated need to receive and review recent
2 discovery responses to determine what additional discovery, if any, might be necessary. Given
3 the brief time period requested for review, the Court will **grant** Plaintiff's Motion for Extension
4 of Time (#180). Accordingly,

5 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Extension of Time (#180) is
6 **granted**. Plaintiff shall have until **July 1, 2011**, to file a Statement of Additional Discovery
7 Requested with the Court. Defendants' Response or Statement of Additional Discovery
8 Requested shall be filed within **3 business days** of receipt of Plaintiff's statement.

9 **IT IS FURTHER ORDERED** that, consistent with its prior order (#176), the Court will
10 address the need for additional discovery based on its determination of the discovery that
11 reasonably remains.

12 **RECOMMENDATION**

13 **IT IS HEREBY RECOMMENDED** that Plaintiff's Motion to Modify Scheduling
14 Order (#179) be **denied** as the proposed amendment would be futile and subject to dismissal on
15 the same grounds identified by the Court in its prior order of dismissal.

16 **NOTICE**

17 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must
18 be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court
19 has held that the courts of appeal may determine that an appeal has been waived due to the failure
20 to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This
21 circuit has also held that (1) failure to file objections within the specified time and (2) failure to
22 properly address and brief the objectionable issues waives the right to appeal the District Court's
23 order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
24 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir.
25 1983).

26 DATED this 21st day of June, 2011.

27 
28 **GEORGE FOLEY, JR.**
United States Magistrate Judge